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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,926	09/24/2003	Jean M. Beaupre	END5009USNP	4594
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PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			EXAMINER CHEN, VICTORIA W	
			ART UNIT	PAPER NUMBER
			3739	
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			11/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

mn

Office Action Summary	Application No. 10/669,926	Applicant(s) BEAUPRE, JEAN M.	
	Examiner Victoria W. Chen	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/24/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 15-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 15-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/2/02 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11 and 15-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Haibel, Jr. et al. (US Pat No 6254623B1).

Regarding claim 1, Haibel discloses an ultrasonic blade having a one-half wave segment [col. 4, ll. 64-66], a first portion [46], a second portion [half of 48], a third portion [the other half of 48], the first portion comprising a first cross-sectional area [col. 5, ll. 14-17] and the second and third portions comprising a second cross-sectional area [col. 5, ll. 28-29].

Regarding claim 2, Haibel discloses an ultrasonic instrument comprising a housing [100], a sheath [36] joined to the housing and an ultrasonic waveguide [96], the waveguide having an end effector [98], a one-half wave segment [col. 4, ll. 64-66], a first portion [46], a second portion [half of 48], a third portion [the other half of 48], the first portion comprising a first cross-sectional area [col. 5, ll. 14-17] and the second and third portions comprising a second cross-sectional area [col. 5, ll. 28-29].

Regarding claim 3, Haibel discloses a clamp arm [42] pivotably mounted on the distal end of the sheath [see col. 5, ll. 55-56].

Regarding claim 4, Haibel discloses the first cross-sectional area is greater than the second cross-sectional area [col. 5, ll. 29-31].

Regarding claim 6, Haibel discloses the first cross-sectional area is constant [col. 5, ll. 14-17].

Regarding claim 7, Haibel discloses the second cross-sectional area is constant [col. 5, l. 28-29].

Regarding claim 11, Haibel discloses the third portion is distal to the first portion [Fig. 1].

Regarding claims 5 and 9, if the ultrasonic blade as disclosed by Haibel is now reinterpreted as having a one-half wave segment [col. 4, ll. 64-66], a first portion [48], a second portion [half of 50], a third portion [the other half of 50], the first portion comprising a first cross-sectional area [col. 5, ll. 28-29] and the second and third portions comprising a second cross-sectional area [col. 5, ll. 37-38], Haibel discloses the first cross-sectional area is less than the second cross-sectional area [col. 5, ll. 29-32] and discloses the second cross-sectional area is variable [col. 5, ll. 38-39].

Regarding claim 8, if the ultrasonic blade as disclosed by Haibel is now reinterpreted as having a one-half wave segment [col. 4, ll. 64-66], a first portion [46], a second portion [half of 50], a third portion [the other half of 50], the first portion comprising a first cross-sectional area [col. 5, ll. 14-17] and the second and third portions comprising a second cross-sectional area [col. 5, ll. 37-38], Haibel discloses the first cross-sectional area is greater than the second cross-sectional area [Fig. 1] and Haibel discloses the second cross-sectional area is variable [col. 5, ll. 38-39].

Regarding claim 10, if the ultrasonic blade as disclosed by Haibel is now reinterpreted as having a one-half-wave segment [col. 4, ll. 64-66], a first portion [48], a second portion [half of 46], a third portion [the other half of 46], the first portion comprising a first cross-sectional area

[col. 5, ll. 28-29] and the second and third portions comprising a second cross-sectional area [col. 5, ll. 14-17], Haibel discloses the second portion is located proximal to the first portion [Fig. 1].

Regarding claim 15, Haibel discloses an ultrasonic blade having a one-half wave segment [col. 4, ll. 64-66], a first portion [the middle third of 48], a second portion connected to the distal end of the first portion [the distal third of 48], a third portion connected to the proximal end of the first portion [the proximal third of 48], the first portion comprising a first cross-sectional area and the second and third portions comprising a second cross-sectional area.

Regarding claim 16, Haibel discloses an ultrasonic instrument comprising a housing [100], a sheath [36] joined to the housing and an ultrasonic waveguide [96], the waveguide having an end effector [98], a one-half wave segment [col. 4, ll. 64-66], a first portion [the middle third of 48], a second portion connected to the distal end of the first portion [the distal third of 48], a third portion connected to the proximal end of the first portion [the proximal third of 48], the first portion comprising a first cross-sectional area and the second and third portions comprising a second cross-sectional area.

Regarding claim 17, Haibel discloses a clamp arm [42] pivotably mounted on the distal end of the sheath [see col. 5, ll. 55-56].

Regarding claim 18, if the first portion is now interpreted as the proximal half of element 50, and the second portion is interpreted as the distal half of element 50 and the third portion is interpreted as 48, the first cross-sectional area is greater than the second cross-sectional area, in this case, the cross-sectional area of element 48 [Fig. 1].

Regarding claim 19, if the first portion is now interpreted as element 48, and the second portion is interpreted as 50, and the third portion is interpreted as 46, the first cross-sectional area

is less than the second cross-sectional area, in this case, the cross-sectional area of element 50 [Fig. 1].

Regarding claims 20 and 21, Haibel discloses the first and second cross-sectional areas are constant [col. 5, ll. 16-18, 28-29, 37-38].

Regarding claim 22, since the second cross-section area can be interpreted as either the cross-sectional area of the distal half of 50 or the cross-sectional area of 48, the second cross-sectional area can be interpreted as variable.

Regarding claim 23, since the second cross-section area can be interpreted as either the cross-sectional area of 50 or the cross-sectional area of 46, the second cross-sectional area can be interpreted as variable. Furthermore, Haibel discloses the second cross-sectional area of element 50 can be variable [col. 5, ll. 38-39].

Response to Arguments

The Examiner acknowledges the cancellation of claims 12-14. Pending claims are now 1-11 and 15-23.

Applicant's arguments filed 10/24/07 with regards to the 35 USC 102 rejections of claims 1-11 have been fully considered but they are not persuasive. Applicant argued that Haibel fails to disclose a one half wave segment comprising a first, second and third portions. However, Haibel clearly states that the waveguide [96] has a length equal to an integer number of one-half wavelengths ($n\lambda/2$) [col. 4, ll. 64-66], which includes when $n=1$. Furthermore, Applicant argued that Haibel fails to disclose the one half wave segment comprising portions 46 and 48. However, Haibel clearly states that the waveguide comprises portions 46, 48 and 50 [col. 5, ll. 13-14]. Applicant should note that "comprises" is not a term that is exclusive of other elements. With

regards to Applicant's argument about claim 10, it seems Applicant has misread the rejection. The examiner interpreted the second portion as being half of element 46, not 48, and the first portion as being 48, not 46 [see Final Rejection, sent 5/24/07, pg. 4, ll. 16-21].

New rejections under 35 USC 102 have been added for new claims 15-23. Applicant should note again that "comprises" is not a term that is exclusive. Further, there is no claim language that specifies that first and second cross-sectional areas are different.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victoria W. Chen whose telephone number is (571) 272-3356. The examiner can normally be reached on M-F 8:30-5.

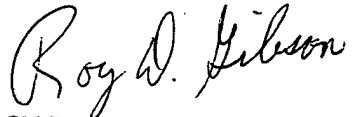
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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11/25/07


ROY D. GIBSON
PRIMARY EXAMINER